IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6415 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BOTAD NAGAR PALIKA - Petitioner(s)
Versus
GENE.SECRETARY - Respondent(s)

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Appearance :

M/S THAKKAR ASSOC. for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1,
MR TR MISHRA for Respondent(s) : 1,
MR UT MISHRA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 28/07/2006

ORAL JUDGMENT

1. Heard the learned Advocate, Mrs.Sangita Pahwa, appearing on behalf of petitioner and

learned Advocate, Mr.U.T.Mishra, appearing on behalf of respondent.

2. With the consent of learned Advocates appearing for the respective parties, this matter is taken up for final hearing.

3. In the present petition, the petitioner Botad Nagarpalika has challenged the order passed by Labour Court, Baroda in Recovery Application No.200 of 1989 dated 30.8.2005. The Labour Court has granted the double amount of weekly off in favour of Jivrajbhai Govindbhai, Bahadurbhai Abdulbhai and Chhotalal Bachubhai with cost of Rs.500/- each to concerned workmen.

4. This Court has issued Rule and ad-interim relief in terms of Para.12(B) has been granted.

5. Learned Advocate, Mrs.Sangita Pahwa, submitted that Labour Court has no jurisdiction to pass such order because workmen were not

having pre-existing right and, therefore, Labour Court has committed gross error in granting such benefits in favour respondents workmen. She also submitted that Labour Court cannot adjudicate the issue which is function of Labour Court under Section 10(1) of the I.D.Act,1947. She also submitted that the amount of weekly off cannot be paid as a double amount of salary to the workmen. For receiving such amount, there was no pre-existing right exists in favour of the workmen. Therefore, the Labour Court has committed gross error in granting benefit in favour of respondents workmen.

6. Learned Advocate, Mr.U.T.Mishra, submitted that Labour Court has taken into account the contention of pre-existing right while discussing the evidence on record. According to him, Labour Court has come to the conclusion that for the period from 1.6.1980 to 30.6.1989, no weekly off was given to the workmen and no compensation or allowance had been paid to the respondents

workmen. In such circumstances, under Section 13(c) of the Minimum Wages Act,1948, this benefit is a statutory benefit available to the workman which amounts to pre-existing right read with Rule 25(2) of Minimum Wages (Central) Rules,1950. Therefore, learned Advocate, Mr.U.T.Mishra, submitted that Labour Court has rightly considered the pre-existing right based on provisions of Minimum Wages Act and Rules. Therefore, he submitted that Labour Court has not committed any error while passing such award and granting the benefit under the provisions of Minimum Wages Act to the respondents workmen.

7. I have considered the submissions made by both the learned Advocates. The Recovery Application has been filed by workmen under Section 33(c)(2) of the I.D.Act,1947. The claim of the workmen was to grant double payment of working on weekly off for the period from 16.6.1980 to 30.9.1989 and 1.6.1980 to 30.9.1989. The amount has been calculated by the workmen on

the basis of single salary which has been doubled for working on weekly off. Petitioner has filed reply raising the objection that Recovery Application is not maintainable vide Exh.17. The contention raised by petitioner that against the working in weekly of, some compensation has been paid by the petitioner to the workmen. Petitioner has produced certain documents on record vide Exh.35/1 to 35/3. Thereafter, all the three workmen were examined vide Exh.7, 8 and 9. Thereafter, their evidence was closed. On behalf of petitioner, one Shri Bharatbhai Pravinbhai Vyas vide Exh.52 was examined and thereafter, evidence of petitioner was closed. Both the parties have cited number of authorities before the Labour Court and made submissions before the Labour Court. Considering the oral and documentary evidence as well as authorities which have been relied by both the parties and giving reasons in Para.10, ultimately come to the conclusion that the claim based on provisions of Minimum Wages Act / Rules where it is provided

that payment for work on a day of rest at a rate not less than the over time rate, the register to be maintained for the over time by the employer. The Labour Court has considered one aspect that specific application was made by the respondents workmen to the petitioner to produce the record, muster / presence register for the aforesaid period from 1.6.1980 to 30.9.1989. According to workman, during this 9 years period, in all, they have worked for 485 weekly of. But, against that working on weekly off, the salary was not paid at double rate / over time rate. Therefore, the recovery was filed. In respect to the applications submitted by the workmen to produce the relevant register / muster /presence register of the workmen concerned, whether, in fact, they worked / actually worked on weekly off or not, can be examined or can be proved before the Labour Court but, no such records were produced by the petitioner before the Labour Court and ultimately, the Labour Court has considered evidence on record as well as relevant decisions

on the aspect where Calcutta High Court has examined such issue that in case if workman is required to work on weekly off, he entitled the wages at a double rate. The decision of this Court is also taken into account which is reported in 2005 Lab.I.C. Page-664. This decision has been given by this Court under the provisions of Minimum Wages Act and this Court has decided that on the day of rest, if work was taken, then, employer should have to pay the amount on double rate. The Labour Court has also considered that in spite of making demand by separate application by the workmen to the petitioner to produce relevant records to justify, whether workmen had actually worked or not on weekly off but, no record was produced. Therefore, adverse inference has been rightly drawn by the Labour Court in light of the oral evidence of all the three workmen. The Labour Court has given detailed reasons in support of its conclusion. Therefore, according to my opinion, the Labour Court has not committed any error which requires

any interference by this Court while exercising the power under Article 227 of the Constitution of India.

8. This aspect has been considered by the apex court in Laxmikant Revchand Bhojwani and another versus Pratapsing Mohansingh Pardeshi, reported in (1995) 6 SCC 576. Relevant observations made by the apex court in para 9 of the said judgment are therefore reproduced as under:

> “The High Court under Article 227 cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes. “

9. In Ouseph Mathai and Others versus M. Abdul Khadir, reported in (2002) 1 SCC 319, the apex court observed as under in para 4 and 5 :

“It is not denied that the powers conferred upon the High Court under Articles 226 and 227 of the Constitution are extraordinary and discretionary powers as distinguished from ordinary statutory powers. No doubt Article 227 confers a right of superintendence over all courts and tribunals throughout the territories in relation to which it exercises the jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said Article as a matter of right. In fact power under this Article cast a duty upon the High Court to keep the inferior courts and tribunals within the limits of their authority and that they do not cross the limits, ensuring the performance of duties by such courts and tribunals in accordance with law conferring powers within the ambit of the enactments creating such courts and tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this Article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party.

5. In Waryam Singh v. Amarnath (1954 SCR 565) this Court held that power of superintendence conferred by Article 227 is to be exercised more sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors. This position of law was reiterated in Nagendra Nath Bose v. Commr. of Hills Division (1958 SCR 1240). In Bhahutmal Raichand Oswal v. Laxmibai R. Tarta (AIR 1975 SC 1297) this Court held that the High Court could not, in the guise of exercising its jurisdiction under Article 227 convert itself into a Court of appeal when the Legislature has not conferred a right of appeal. After referring to the judgment of Lord Denning in R v. Northumber Compensation Appeal Tribunal, Exparte Shaw (1952 (1) All ER 122, 128) this Court in Chandavarkar Sita Ratna Rao v. Ashalata S. Gurnam held : (SCC p.460 para 20)

"20.It is true that in exercise of jurisdiction under Article 227 of the Constitution the High Court could go into the question of facts or look into the evidence if justice so requires it, if there is any misdirection in law or a view

of fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under Articles 226 and 227 of the Constitution to look into the fact in the absence of clear and cut down reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a finding within the jurisdiction of the inferior tribunal except where the findings are perverse and not based on any material evidence or it resulted in manifest injustice (see Trimbak Gangadhar Teland 1977 (2) SCC 437). Except to the limited extent indicated above, the High Court has no jurisdiction. In our opinion therefore, in the facts and circumstances of this case on the question that the High Court has sought to interfere, it is manifest that the High Court has gone into questions which depended upon appreciation of evidence and indeed the very fact that the learned trial Judge came to one conclusion and the Appellate Bench came to another conclusion is indication of the position that two views were possible in this case. In preferring one view to another of factual appreciation of evidence, the High Court transgressed its

limits of jurisdiction under Article 227 of the Constitution. On the first point, therefore, the High Court was in error."

10. In Roshan Deen versus Preeti Lal, reported in (2002) 1 SCC 100, the apex court observed as under in paragraph 12:

> “We are greatly disturbed by the insensitivity reflected in the impugned judgment rendered by the learned Single Judge in a case where judicial mind would be tempted to utilize all possible legal measures to impart justice to a man mutilated so outrageously by his cruel destiny. The High Court non suited him in exercise of a supervisory and extraordinary jurisdiction envisaged under Article 227 of the Constitution. Time and again this Court has reminded the power conferred on the High Court under Articles 226 and 227 of the Constitution is to advance justice and

not to thwart it (vide State of UP v. District Judge, Unnao [(1984) 2 SCC 673: AIR 1984 SC 1401]). The very purpose of such constitutional powers being conferred on the High Court is that no man should be subjected to injustice by violating the law. The lookout of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by-produce of an erroneous view of law, the High Court is not expected to erase such justice in the name of correcting the error of law."

11. Therefore, in view of the aforesaid judgments and since the petitioner has not been able to point out any infirmity and/or jurisdictional error committed by labour court in

the impugned award, present petition is required to be dismissed.

12. In result, present petition is dismissed. Rule is discharged. Interim relief, if any, granted stands vacated forthwith. There shall be no order as to costs.

(H.K. Rathod,J.)

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